



## ARKANSAS TOBACCO CONTROL



Asa Hutchinson  
Governor

Steve Goode  
Director

### BOARD MEETING MINUTES APRIL 7, 2016

The Arkansas Tobacco Control Board met on Thursday, April 7<sup>th</sup>, 2016 for its monthly meeting in the Main Street Mall Building, located at 101 E. Capitol Avenue, Little Rock, Arkansas, beginning at 10:00 a.m. in Suite 119. There were 7 Board members present. Those attending were Mr. Kevin Case Chairman, Dr. Shabbir Dharamsey, Ms. Carol Dyer, Dr. J.J. Lacey Jr., Dr. Brad Mayfield, Mr. Sam Stathakis Jr. and Mr. Jay Hickey.

Mr. Case began the meeting with a "Welcome" to those attending. He then introduced Mr. Mark Ohrenberger serving as the Hearing Officer and Mrs. Jana Perry serving as Court Reporter. Mr. Case then proceeded with the meeting.

Mr. Case asked for a motion to approve the board meeting minutes from February 4, 2016.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

The default list dated March 3, 2016 was presented and read aloud by Attorney Roland Darrow.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

The Hearing Officer then opened the Disciplinary Hearings and asked Attorney Roland Darrow, to present the following.

## **CONSENT ORDERS**

**IN RE: NASER AMDALLAH and  
LIAH FOOD INC. DBA BUDDY'S GET IT & GO  
PERMIT NO. 08275-05**

**No. 2013-0340**

On June 18, 2015, Respondents' business was the subject of a store inspection. During the course of that inspection, it was discovered that the respondents possessed tobacco products for which they failed to maintain invoices or transfer paper work on as required by law and ATC's interpretation of the same. Respondents also were advertising Newport Red and Newport Gold cigarettes below the minimum possible legal price in Arkansas, failed to have ATC Server Awareness Forms on file for all employees and are in violation of A.C.A. § 26-57-213 and § 4-57-708 as well as A.T.C.B. Rule 4.1.

The Respondents shall be fined \$400.00 as a civil penalty for the violation A.C.A. § 26-57-213. Respondents' retail permit is ordered suspended for 1 day, respondents are fined \$100 as a civil penalty for the violation § 4-57-708 and are issued a warning for the violation of A.T.C.B. Rule 4.1

The Board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

**IN RE: TIM LESLIE  
AND POOR BOY'S LIQUOR  
HUGHES, ARKANSAS  
PERMIT NO. 03471-01**

**NO. 2015-248**

On June 28, 2015, a white Mercedes SUV registered to Respondent Time Leslie and his wife was observed being loaded with tobacco products at Memphis Cash & Carry. The vehicle was followed back to Respondents' business at which time contact was made, an investigation initiated and a store inspection undertaken. During the course of the inspection and investigation, it was discovered that Respondents had purchased and then possessed tobacco products for which the Arkansas tobacco excise tax had not been paid. Respondents had purchased some of the untaxed tobacco from an unlicensed dealer (Memphis Cash & Carry) and had failed to maintain invoices as required by law for the rest of the untaxed tobacco they possessed

The Respondents are fined \$11,000.00 as a civil penalty for the violation of A.C.A. § 26-57-245, Respondents' retail permit is ordered revoked and the

confiscated tobacco products are ordered to be destroyed; Respondents are fined \$500.00 as a civil penalty and Respondents' retail permit is ordered revoked for the violation of A.C.A. § 26-57-228 and; Respondents are fined \$500.00 as a civil penalty and Respondents' retail permit is ordered revoked for the violation of A.C.A. § 26-57-213. The permit revocation is effective March 7, 2016.

The Board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

**IN RE: DAVID ENKEMA and  
PILOT TRAVEL CENTERS LLC #430  
RUSSELLVILLE, ARKANSAS  
PERMIT NO. 01791-02**

**CASE NO. 2016-052**

On February 4, 2016, Respondents' clerk sold a tobacco product to a minor for a second time within forty-eight months, in violation of A.C.A. § 5-27-227(a)(1).

The Respondents shall be fined \$250.00 as a civil penalty and all employees of Pilot Travel Centers LLC #430 in Russellville, Arkansas must attend an ATC Merchant Education Training class within six (6) months of the date of this Order.

The Board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

**IN RE: JAMES R. FIKES and  
CE FIKES ET AL PTR CEFCO DBA FOOD FAST #1110  
CROSSETT, ARKANSAS  
PERMIT NO. 05960-04**

**CASE NO. 2016-069**

On February 16, 2016, Respondents' clerk sold a tobacco product to a minor for a second time within forty-eight months, in violation of A.C.A. § 5-27-227(a)(1).

The Respondents shall be fined \$250.00 as a civil penalty and all employees of Food Fast #1110 in Crossett, Arkansas must attend an ATC Merchant Education Training class within six (6) months of the date of this Order.

The Board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

### **LENIENCY HEARING OR BOARD MANDATED HEARINGS**

**IN RE: MIKE COX and NEIGHBORS INC.  
HOPE, AR**

**CASE NO. 2015-0521**

On December 29, 2015, a compliance check was performed on said business and during the course of said compliance check, a tobacco product was sold to a minor.

Mr. Mark Ohrenberger addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called Investigator Linda Card to the stand. Miss Card addressed the board and gave a brief testimony. She stated that she and her undercover minor arrived at the said store. She then instructed her minor to go inside and attempt to purchase tobacco product. That is when Attorney Darrow address the board and told them they had video of the purchase. So the video was played for the board and the audience. Once the video concluded, Mr. Ohrenberger asked Miss Card if she had any further testimony to present and she said no.

Mr. Ohrenberger then address the defendant, Mr. Mike Cox, and explained that it was his time to give testimony. Mr. Cox addressed the board and said that he in no way was contesting the fact that one of his store clerks sold to a minor and completed the transaction. He was there to let them know of all the actions and steps that have been taken and are being taken to keep this from happening. He stated that he would let his manager further explain everything they have done not only in this store but all their other stores as well. He stated that they have not had this or any problems like it with any of their others stores and that they have been compliant and on top of making sure that their clerks are fully aware of the consequences of selling to a minor. Mrs. Loretta Ward explained that they have been paying monthly for a POS system that was put in place after their first offence accrued to insure that a sale to minor would not happen again. She stated on the day that the purchase was made that the system had some sort of malfunction and did not work properly during the said transaction. The system did not do the correct prompting that it should have to keep the clerk from completing the transaction. Instead, it generated a prompt that lead the clerk to believe the sale was ok to complete. However the said clerk did not look at the actual ID but rather relied on the program and made the sale.

Mr. Orhenberger asked both Mr. Cox and Mrs. Ward if they had anything else they would like to state before the matter went into deliberation. Mr. Cox stated

again that they were not there to contest what had happened but to ask the board for leniency on the suspension and thanked the board for hearing their case.

Before a motions was passed Chairman Case asked for Mr. Christi Harper to do a roll call. All 7 were present and accounted for with 1 absent.

After much deliberation among the board members and motion suggestions made by Mr. Hickey, Dr. Dharamsey and Mr. Stathakis, a final motion was decided upon. A motion was made to fine the respondents \$1,000.00 with a 7 day suspension pending that they do not receive another violation within 18 months at which time if a violation occurs the suspension will be reinstated and will run in addition to the new violation.

The motion passed with 7 yes votes and 1 absent.

**IN RE: NICOLE ARNOULT and ZOMBIE VAPES INC.  
WALNUT RIDGE, AR**

**CASE NO. 2016-0084**

On February 23, 2016, an investigation was performed on said business and during the course of said investigation, the permittee purchased tobacco, vapor or alternative nicotine product from an unlicensed dealer.

Mr. Ohrenberger addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called investigator Tad Huntsman to the stand. Agent Huntsman addressed the board and began his testimony. He stated that that he had gone into the store to do a further check of their E-juice inventory and discovered that they had been ordering their product from an unlicensed wholesaler. He asked the owner if they were aware of this and Mr. Arnoult stated that she had been in contact with them to make sure but that she never did follow up after they told her they would be in contact back with her.

Mr. Ohrenberger address the defendant and explained that it was her time to give testimony. Miss Nicole Arnoult address the board and stated that in no way was she trying to contest what had been done. She apologized for not following back up with the wholesaler to make sure they did in fact have permit before she continued ordering her product from them. She said that she gave them to much benefit of the doubt and was counting on them being good on their word. She apologized again and said that was bad judgement on her part. She stated to the board that she is asking for leniency on the suspension. She said this store is her lively hood and it would be devastating to have to close the doors for a couple of days. She said she would gladly pay a bigger fine amount if she could still stay open.

Mr. Ohrenberger then, after hearing both testimonies called for closing arguments. Mr. Darrow asked the board to levy an appropriate fine and suspension for this store and to take into consideration the penalty they levey

due to this being the first hearing to be carried out on a vapor store. He stated that the decision they make will set precedent for future hearings on vapor stores.

Mr. Ohrenberger then addressed Miss Arnoult for her closing statement and Miss Arnoult again asked the board to not give them a suspension but to just let them have the fine. Mr. Ohrenberger then addressed the board for a motion.

Dr. Dharamsey presented a motion to the board of \$500.00 fine with no 10 day suspension held in abeyance pending no other offense takes place within 18 months. If an offense is committed within that 18 months then the suspension takes effect and they will be subject to that and the new penalties.

Before a motion was passed Chairman Case asked for Mr. Christi Harper to do a roll call. All 7 were present and accounted for with 1 absent.

The motion passed with 7 yes votes and 1 absent.

### **WHOLESALE APPLICATIONS**

AOP Ventures Inc.

Monterey CA,

A motion was made to approve the New Wholesale Application and was passed with 7 yes votes and 1 absent.

Deputy Director Sled gave a brief update on the Enforcement division activities and compliance check rates. He stated that there are still 464 stores left that have not been visited in the state yet. However, some of the stores that are in that 464 count have permits already but they are not selling tobacco at this time. So the 464 count is skewed as a result and not completely accurate. He briefly mentioned that Mandy Miller has been and will be busy this month holding training sessions across the state. He gave a brief on the agents and the fight against smuggling. He stated that he is proud of the great work they are doing in making advances in preventing further smuggling into the state. He also gave a brief on the ATC office construction and renovation that is set to take place starting Monday of next week. The construction comes at the request of the Governor to help cut back on cost.

Deputy Director Larry Owens gave a brief update on the activities in the FDA Division and said that they have completed 341 compliance checks for their division for April. He also stated that they finally closed out last year's contract and now are in the process of getting things together for this year's contract.

Attorney Roland Darrow addressed the Board and let them know an update on where things are at with the appeal for Neighborhood Grocery. He stated that they are set to have a hearing on April 20<sup>th</sup>.

## **ADJOURNMENT**

In closing, Mr. Case announced the next Board Meeting will be May 5, 2016, and then the meeting was adjourned.

Minutes prepared by

*Christi Harper*

April 13, 2016

Christi Harper